

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. CRISTINA CHEN-OSTER; LISA PARISI;
and SHANNA ORLICH, on behalf of
themselves and all others similarly situated,

Plaintiffs,

-against-

GOLDMAN, SACHS & CO. and THE
GOLDMAN SACHS GROUP, INC.,

Defendants.

No. 10 Civ. 6950 (AT) (JCF)

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Plaintiffs respectfully submit the attached opinion in *Suchanek v. Sturm Foods, Inc.*, Nos. 11-565, 11-889, 11-1035, 11-1068, & 12-224, --- F.3d --- (7th Cir. Aug. 22, 2014) (attached as Exhibit A) as supplemental authority in support of Plaintiffs' Motion for Class Certification (Dkt. 246).

Suchanek supports Plaintiffs' argument that variation in class members' damages – including the fact that some class members may not have any damages at all - does not defeat commonality. “If the court thought that no class can be certified until proof exists that every member has been harmed, it was wrong.” Slip. Op. at 13. The panel reasoned that a class will often include persons who have not been injured, but “how many (if any) class members have a valid claim is the issue to be determined after the class is certified.” *Id.* (citations omitted). Further, if a class definition is overbroad such that it includes individuals who could not possibly have been harmed by defendant's conduct, the proper remedy is not to deny certification, but to adjust the class definition. *Id.* at 13-15.

The opinion also supports Plaintiffs' argument that certification of a damages class under Rule 23(b)(3) is appropriate. The panel held that individual issues of reliance and causation do not defeat predominance. *Id.* at 17. Instead, the threshold inquiry for predominance requires a “rigorous analysis into whether the plaintiffs' ‘damages are susceptible of measurement across the entire class.’ *Id.* at 18 (citing *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1433 (2013)).

Dated: August 22, 2014

Respectfully submitted,

By: /Anne B. Shaver

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